

ICEX/SIDE

31 November 1967

MEMORANDUM FOR THE RECORD

SUBJECT: Civilian Security Suspects - Military Courts

REFERENCE: Memorandum, 28 November 1967, Legal Processing  
of Civilian Security Suspects

1. The Staff Judge Advocate, MACV, has compiled statistics on security offenders tried and convicted in the military courts (Attachment A) from records at the Directorate of Military Justice in Saigon. These show an increase from a rate of about 2,400 per year to about 3,000 per year.

2. The more serious cases have been tried by the Military Field Courts. In accordance with arrangements made with the GVN, the field courts will be enabled to hear the bulk of the security cases in the future, and the organization of four new field courts has been authorized by executive decree.

3. With six of the eight present courts hearing security cases during the period January-June 1967, each court convicted an average of about 42 security offenders per month. This would equal about 500 per year per court. If all eight courts now existing were to convict civilian security offenders at this rate, the total would be about 4,000 a year. This would be a sizeable attack on the existing backlog of CD cases, set out in Reference.

4. If the existing military courts can try security cases at the rate of 500 per year, despite their substantial load of other work, the newly authorized field courts should be able to try a larger number.

5. Based on available statistics, indications are that the majority of CD's shown in prison statistics as "sentenced" have been detained by order of the Provincial Security Committees (PSC's). We do not have accurate information on the volume of CD cases handled by the PSC's or their disposition. Efforts should be made to obtain such information.

With reasonably accurate figures as to the input of CD's to the system, and as to the functioning of the PSC's, we can then estimate the expected CD case load for the military courts and make recommendations as to the organization of new field courts. The functioning of the PSC's is of great importance, since they commonly perform a legal screening function and send selected security cases to the military courts for trial. (The actual order for trial is issued by the Corps Commander.) The system cannot be effective if the PSC's fail to take appropriate action on the cases before them.

6. The mere existence of courts, or the organization of new ones, will not move the cases along, if the courts are not properly staffed and functioning. From Attachment A, it is evident that the Military Field Court in I Corps has not been active in the trial of security cases. My inquiry and report on this is appended thereto as Attachment B. One of the first actions should be to help get this court functioning properly, especially in view of the desire of Commander, III MAF, to have CD's processed promptly and those convicted moved to secure prisons elsewhere. It appears from the annex to Attachment B that the court is not adequately staffed to investigate, prepare and try these cases in substantial volume. The Military Field Court in II Corps also appears to be under-staffed.

7. On a recent visit to IV Corps, I talked with Captain Hickman, Staff Judge Advocate, and through him with the Prosecutors of the two military courts (regular and field). The regular military court has been organized only recently in IV Corps and is in the process of getting in full operation. Captain Hickman is assisting in this.

8. In II Corps, I have talked on several occasions with Captain John T. Burch, Staff Judge Advocate, and through him with the Prosecutors of the two military courts in Nha Trang. Captain Burch has been active in helping to improve the facilities of the two military courts there. He also rides circuit to I Corps and keeps in touch with the military courts there.

9. The provision to the military courts of qualified legal personnel in adequate numbers is the first requirement for their efficient functioning. The SJA has regularly worked on this problem and will continue to follow up and make

recommendations as needed. The SJA has made an estimate of personnel needs and resources for the authorized new field courts (Attachment C) and of the cost of furnishings and equipment for each such court - \$4,622,60. (Attachment D)

10. Every effort must be made to expedite the processing and trial of security offenders and to encourage the authorities to take an aggressive approach and to refer appropriate cases for trial. The preparation and trial of a case involves considerable work, and at times political risks. It is often not the easiest or most palatable alternative available to the authorities.

[Redacted Signature]

Legal Counsel

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**NUMBER OF SECURITY OFFENDERS TRIED AND CONVICTED**

n 66 to Dec 66

	I Corps	II Corps	III Corps	IV Corps	TOTAL
Regular Military Court	693	440	962		2,095
Military Field Court	1	108	119	86	314

Jan 67 to Jun 67

Regular Military Court "	639	153	411		1,203
Military Field Court	0	111	146	77	334

**NUMBER OF SECURITY OFFENDERS TRIED AND CONVICTED****Regular Military Court Jan - 66 - Dec 66**

	<u>I Corps</u>	<u>II Corps</u>	<u>III Corps</u>	<u>IV Corps</u>	<u>TOTAL</u>
January	No Court Session	24	31		55
February	52	36	73		161
March	35	37	88		160
April	36	57	62		155
May	23	51	102		176
June	77	No Court Session	73		150
July	15	48	122		185
August	53	30	106		189
September	63	64	93		220
October	204	29	80		313
November	91	333	39		163
December	44	31	93		168
<b>TOTAL</b>	<b>693</b>	<b>440</b>	<b>962</b>		<b>2,095</b>

**NUMBER OF SECURITY OFFENDERS TRIED AND CONVICTED****Military Field Courts - Jan 66 - Dec 66**

	<b>I Corps</b>	<b>II Corps</b>	<b>III Corps</b>	<b>IV Corps</b>	<b>TOTAL</b>
<b>January</b>	No Court Session	No Court Session	6	No Court Session	6
<b>February</b>	No Court Session	10	9	4	23
<b>March</b>	"	1	4	11	16
<b>April</b>	"	1	8	7	16
<b>May</b>	"	1	13	7	21
<b>June</b>	"	16	3	3	22
<b>July</b>	"	No Court Session	10	16	26
<b>August</b>	"	16	13	10	39
<b>September</b>	"	19	13	15	47
<b>October</b>	"	15	13	11	39
<b>November</b>	"	4	22	0	26
<b>December</b>	<u>1</u>	<u>25</u>	<u>5</u>	<u>2</u>	<u>33</u>
<b>TOTAL</b>	<b>1</b>		<b>119</b>	<b>86</b>	<b>314</b>

**NUMBER OF SECURITY OFFENDERS TRIED AND CONVICTED****Regular Military Court - Jan 67 - Jun 67**

	<u>I Corps</u>	<u>II CORPS</u>	<u>III Corps</u>	<u>IV Corps</u>	<u>TOTAL</u>
January	No Court Session	30	85		115
February	45	13	28		86
March	233	3	90		326
April	116	20	90		226
May	No Court Session	34	62		96
June	245	53	56		354
<b>TOTAL</b>	<b>639</b>	<b>153</b>	<b>411</b>		<b>1, 203</b>

**NUMBER OF SECURITY OFFENDERS TRIED AND CONVICTED****Military Field Courts - Jan 67 - Jun 67**

	<u>I Corps</u>	<u>II Corps</u>	<u>III Corps</u>	<u>IV Corps</u>	<u>TOTAL</u>
January	0	0	24	0	24
February	0	45	4	11	60
March	0	35	6	0	41
April	0	72	24	41	77
May	0	19	36	5	60
Jun	<u>0</u>	<u>0</u>	<u>52</u>	<u>20</u>	<u>72</u>
<b>TOTAL</b>	0	111	146	77	334



## ICEX/SIDE

21 October 1967

## MEMORANDUM FOR THE RECORD

SUBJECT: Trial of Civilian Security Suspects -  
Military Field Court in Danang

1. In a conversation today in Danang with a legal officer of the Military Field Court in Danang, the information and opinions set forth below were developed.

2. The court has as its jurisdiction Danang and the five Provinces of I Corps. It is a mobile court and travels to the principal cities in its jurisdiction to hear cases, but particularly to Hue and Quang Ngai. At times the accused is brought to Danang for trial.

3. Transportation is a problem. The five members of the court usually can be obtained from officers stationed in the vicinity of the hearing but the prosecutor, court reporter and certain support personnel travel from Danang. Conversely, transporting the accused to Danang may be difficult if there are numerous witnesses to be brought along.

4. This Field Court was established in 1965. During 1966 and so far in 1967 it has heard a substantial number of military desertion cases but has not been active on cases involving civilians accused of offenses against the national security. This is due to a variety of causes. Only three legal officers have been available most of the time to handle the work load of preparing and trying cases. The Buddhist political agitation inhibited trial of VC cases in I Corps. (Sentences of VC in the Hue area are light, I have heard from another source.) Insecurity in the region caused reluctance of witnesses to testify. In addition, substantial numbers of captured VC were classified as POW's in accordance with directives from Saigon. Other large numbers were released in VC attacks on I Corps prisons.

Comment: One of the first steps in I Corps, on screening and detention of civilian security suspects, should be to strengthen the existing Military Field Court and help it become active in the proper disposition of these cases. I am discussing this with the Staff Judge Advocate, MACV, who carries on regular liaison with the Directorate of Military Justice.

Legal Counsel

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*Attachment B*

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Office of the Staff Judge Advocate

MACJA

30 AUG 1967

MEMORANDUM FOR:   
SIDE LEGAL COUNSEL

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SUBJECT: Legal Aspects of the SIDE Program

1. (C) The following information is submitted in accordance with our discussions of 28 Aug 67 concerning subject.

a. Each of the four additional Field Courts to be activated in support of this program should be composed of the following personnel at a minimum:

- 5 Members (President and 4 Assessors)
- 1 Prosecutor
- 1 Assistant Prosecutor
- 2 Court Reporters
- 1 Court Usher
- 1 Chief Clerk
- 4 Clerk Typists
- 1 Messenger/Driver
- 16 TOTAL

b. All of the above are military personnel, and only the Prosecutor and his Assistant are required to be lawyers. Counsel for the accused would be a civilian lawyer appointed by the President of the Bar Association.

c. Three buildings (each approximately 20 x 5.55 meters) would be required at each detention camp to provide a courtroom facility, records area, office space, and to accommodate witnesses and four DMJ personnel (i.e. Prosecutor, Assistant Prosecutor, and two Court Reporters) assigned to the court. It is assumed that the five court members and other personnel will be provided from military units stationed in the immediate vicinity, thereby eliminating any requirement for their living

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**CONFIDENTIAL****MACJA****SUBJECT: Legal Aspects of the SIDE Program**

accommodations. If these personnel are not so assigned and must constitute part of the mobile tribunal, one additional building would be required to provide for their housing.

2. (U) The grade and experience of military prosecutors is prescribed by service regulations rather than statutory law. Under present practice, military lawyers are first appointed as "Aspirants" (equivalent to Warrant Officer) and are promoted to 2nd Lt after 18 months service. Upon promotion to 2nd Lt, the officer may then be appointed "Assistant Prosecutor". Normally, the period of service required for promotion from 2nd Lt to 1st Lt is one year. However, where a 2nd Lt has served in the capacity as "Assistant Prosecutor" for 6 months, the Director of Military Justice may recommend him for earlier promotion to 1st Lt. To be eligible for appointment as "Prosecutor", an officer must be in the grade of at least Captain, and have 4 or 5 years experience as an "Assistant Prosecutor". After 6 months service as a "Prosecutor", the Director of Military Justice may recommend him for promotion to the next grade.

3. (C) Attached is a complete updated list of 82 military lawyers assigned to the Directorate of Military Justice, by name, rank, and job title. It is contemplated that the requirement of 4 additional Prosecutors and 4 Assistant Prosecutors can be satisfied from resources presently envisaged and projected personnel increases. Seven experienced, qualified officers now assigned to the "Special Court" will become available for reassignment in September 1967, when that tribunal is deactivated. In the near term, several aspirants will be promoted to 2nd Lt, thus becoming eligible for appointment as an Assistant Prosecutor. There are also twelve law graduates, now serving in non-legal military assignments, who have applied for transfer into the Directorate of Military Justice. Additional personnel may be procured through improved recruiting techniques and the establishment of more favorable career patterns for military lawyers.

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as

ROBERT H. IVEY  
Colonel, USA  
Staff Judge Advocate

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